

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

April 10, 1962

To: Doris St. Pierre, Secretary, Real Estate Commission

Re: Return of License and Examination Fees

We are in receipt of a letter from a Mr. Harry Reich dated April 7, 1962 in which he requests the return of a \$15 broker's license fee and a \$20 examination fee. It appears that Mr. Reich decided not to take the examination and to withdraw his application for a broker's license. The Commission agreed to refund the license fee but refused to refund the examination fee. This problem has arisen before and because of the conflict in opinions from this office we have deemed it advisable to answer this question from Mr. Reich.

On August 26, 1955, this office advised the Real Estate Commission that both the examination and license fees should be returned to an applicant who asks to withdraw his application. On November 18, 1960 this office advised the Commission that although the license fee was returnable, the examination fee could not be refunded. We have examined the law relative to this question and have determined that the earlier opinion should control and that both the license fee and the examination fee should be returned to any applicant who has withdrawn his application prior to the taking of his examination. For this reason we are withdrawing our opinion of November 18, 1960.

THOMAS W. TAVENNER

Assistant Attorney General

April 10, 1962

Mr. Edward L. Allen
Board of Pharmacy
8 Harlow Street
Bangor, Maine
Re: Drug Stores Selling Beer

Dear Mr. Allen:

We have your request of April 9th for an opinion as to whether or not the Board can prohibit the sale of beer by and in drug stores in the State of Maine.

Revised Statutes, Chapter 68, section 1, subsection I, provides that the Commissioners of Pharmacy have the power "to make such rules and regulations, not inconsistent with the laws of the State, as may be necessary for the regulation and practice of the profession of pharmacy in the lawful performance of its duties; . . ." Revised Statutes, Chapter 61, section 32, provides that any retail store having a stock in trade of at least \$1,000 wholesale value consisting of goods reasonably compatible with a stock of liquor may be granted a malt liquor license by the Maine State Liquor Commission. The merchandise which shall be considered incompatible with the sale of malt liquor is clearly set forth in the above section and in the applicable regulations promulgated by the Liquor Commission. Neither in section 33 nor in the corresponding regulations is the sale of drugs listed as incompatible with the keeping of a stock of malt liquor. For this reason, the Revised Statutes, Chapter 61, section 32, impliedly permits drug

stores to apply for and receive a license for the sale and distribution of malt liquor.

As stated earlier, the Commissioners of Pharmacy have the power to make rules and regulations so long as those rules and regulations are not inconsistent with the laws of the State. If the laws of this State allow drug stores to apply for malt liquor licenses, any regulation promulgated by the Commissioners of Pharmacy which attempts to modify this right would be inconsistent with Chapter 61 and would, therefore, be null and void.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

April 13, 1962

To: Irl E. Withee, Deputy Commissioner of Banks and Banking

Re: Certificates of Deposits as Legal Investments for Savings Banks

In your memo of April 6, 1962, you ask the following question:

May a savings bank legally invest its funds in certificates of deposit with a commercial bank?

Answer: No.

Chapter 59, section 19-I provides that savings banks may hereafter invest their funds in "securities" as listed. In other words, savings banks may only invest in "securities."

We find that in two Maine cases, *Hatch v. First National Bank of Dexter*, 94 Me. 348, and *Cooper v. Fidelity Trust Co.*, 134 Me. 40, our court has said that a certificate of deposit is in legal effect a negotiable promissory note given by a bank to a depositor.

A negotiable promissory note is not a "security." Therefore, a savings bank may not legally invest its funds in certificates of deposit.

GEORGE C. WEST

Deputy Attorney General

April 13, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Financial responsibility for fire control

We have your request for an opinion as to the financial responsibility of various political subdivisions for the suppression of forest fires. As we understand your question, you are asking our interpretation as to how the costs of fire control are to be divided both before and after the declaration of a state of emergency. This opinion will take into consideration the provisions of R.S., Chapter 12, Section 20, R.S., Chapter 97, Section 60, and the agreement between Civil Defense and the Forest Service signed in 1954 by Commissioner Nutting.

Revised Statutes, Chapter 97, Section 60, provides that each town shall pay